Supreme Court, U.S.
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No. 93-747

In The

Supreme Court of the United States

October Term, 1993

BRUCE BALDWIN MOHS,

Petitioner,

v.

CENTURY 21 REAL ESTATE CORP., a wholly-owned subsidiary of METROPOLITAN LIFE INSURANCE COMPANY, a Mutual Insurance Company, and TRANS WORLD CORP., a Delaware Corporation,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN RESPONSE TO PETITION

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QUESTIONS PRESENTED FOR REVIEW

Respondents Century 21 Real Estate Corp. and Metropolitan Life Insurance Company object to the form and substance of the "Questions Presented" in the Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit ("Petition") and believe the questions should be as follows:

1. Does the Supreme Court have jurisdiction to consider the Petition, where review is sought under 28 U.S.C. §1257(a), but there has been no decision of a state court of last resort?

2. Has the Petitioner made a showing under Supreme Court Rule 10 that this Court should review the decision of the Court of Appeals for the Seventh Circuit?

PARTIES

The names of all parties appear in the caption of the case.

Respondent Century 21 Real Estate Corp. is a California Corporation duly organized and existing under the laws of the State of California. It has no subsidiaries, other than wholly owned subsidiaries. Its parent company is Metropolitan Life Insurance Company.

Metropolitan Life Insurance Company is a mutual insurance company. It has no parent company. Its subsidiaries (except wholly owned) are as follows:

Blodgett Holdings, Inc.
Braelan Corp.
Briggs Plumbing Products, Inc.
Cicero/Cermak Corporation
Clover Leaf, Inc.
Dan River, Inc.
FB Briggs, Inc.
Genesis Seguros Generales, Sociedad Anonima De Seguros Y Reaseguros
GS Blodgett Corporation
GS Blodgett Inc.
GS Blodgett International Ltd.
Igloo Holdings, Inc.
Igloo Products Corporation
Kolon-Met Life Insurance Company
Lincoln Group Holding Corp.
Magikitch'n, Inc.
Mecco Holding, Inc.
Metlife Portfolios, Inc.
Metropolitan Structures, Inc.
Metropolitan Structures West, Inc.
Pitco Frialator, Inc.
Santander Met, S.A.
Seguros Genesis, S.A.

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OPINIONS BELOW

The April 10, 1993 decision of the United States Court of Appeals For the Seventh Circuit is reproduced in the Appendix to the Petition for Writ of Certiorari at 1b - 1g. Respondents Century 21 Real Estate Corp. and Metropolitan Life Insurance Company (hereinafter collectively "Respondents") object to the format of the order provided in Petitioner's Appendix, in that it contains Petitioner's editorial comments (at pp. ib - ic), which should be struck from the decision.

The November 4, 1991 Order of the United States District Court for the Western District of Wisconsin is reproduced in the Appendix to the Petition at pp. ig - jg.

The April 11, 1991 Opinion and Order of the United States District Court for the Western District of Wisconsin was not reproduced in the Appendix to the Petition, and is therefore reproduced in the Respondents' Appendix.

The January 9, 1986 Memorandum Decision of the Dane County, Wisconsin Circuit Court is reproduced in the Appendix to the Petition at pp. jg - jl.

Respondents object to Mohs' rendition of various decisions referenced in his Appendix, but not fully reproduced, specifically at pp. lh - ik. Those decisions, however, are of no significance for this Court's review.

JURISDICTIONAL STATEMENT

The Respondents Century 21 and Metropolitan Life object to Petitioner's jurisdictional statement, which is

predicated only upon 28 U.S.C. §1257(a). That section provides:

> §1257. State Court; certiorari
>
> (a) Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question and where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.
>
> . . .

As discussed below, no decision of the Supreme Court of Wisconsin is sought to be reviewed. Petitioner's citations at pages 39-40 of the Petition to 28 U.S.C. §§1338(a), 1391(c), 1332(a), and 15 U.S.C. §121 are also inapplicable to this Court's jurisdiction and apply only to District Court jurisdiction. Petitioner has failed to cite any basis for this Court's jurisdiction of this case.

As further set forth in the Discussion portion of this brief, Respondents believe the Supreme Court has no jurisdiction in this case. None of Petitioner's claims were ever considered by the Wisconsin Court of Appeals or the Wisconsin Supreme Court, and Petitioner failed to state federal claims in his action brought before the federal courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents object to Petitioner's statement of Constitutional Provisions and Statutes Involved (Petition at 15-20). The Petition cites various United States Constitutional Amendments, and portions of the State of Wisconsin Constitution. With the possible exception of the First and Fourteenth Amendments, none of these provisions are applicable to the issues presented.

The statutes and rules involved in this case are as follows:

Rule 10 of the Rules of the Supreme Court

. . .

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals in the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal

question in a way in conflict with applicable decisions of this Court.

. . .

STATEMENT OF THE CASE

Respondents incorporate by reference the statement of facts set forth in the April 11, 1991 and November 4, 1991 decisions of the United States District Court for the Western District of Wisconsin. (Petitioner's Appendix ig - jg; Respondents' Appendix 1-14) Respondents also provide the following procedural background information.

Litigation in Wisconsin state courts between Petitioner and Respondent Century 21 initially was commenced by Century 21 Real Estate Corp. against Bruce Mohs and John Livesey (not a party to the Petition) in 1977, following their filing of a Wisconsin trademark registration for "Century 21" "as pertains to building industry merchandising. (Advertising and display of building supplies, materials and merchandise for residential and commercial buildings.)" Century 21 Real Estate Corp. claimed the Mohs-Livesey registration, and other acts, conflicted with its rights under the common law and the Wisconsin trademark registration act. In 1983 Century 21 obtained a partial summary judgment ordering the Wisconsin Secretary of State to cancel the state trademark registration on the grounds that it had been abandoned by Livesey and Petitioner Mohs through lack of actual use in commerce. The remaining issues were tried to a jury in 1984, and the verdict awarded more than $124,000.00 in compensatory and punitive damages in

favor of Century 21 and against Petitioner. Judgment was entered awarding injunctive relief under the Wisconsin trademark registration law as well as monetary damages in accordance with the verdict. Petitioner was enjoined from infringing Century 21's trademarks, from unfairly competing with Century 21 or otherwise injuring its business reputation in any way, and from interfering with Century 21's prospective advantage or established business relationships.

Petitioner appealed the judgment to the Court of Appeals of Wisconsin. While the appeal was pending, Petitioner became aware that Metropolitan Life Insurance Co. was negotiating with Trans World Corp. for the purchase of Century 21's stock. He wrote to members of Metropolitan Life's board of directors in September 1985 asserting that Petitioner had the rights to Century 21's most important asset – its name. Petitioner's letters also transmitted copies of a vanity press autobiography, "The Amazing Mr. Mohs – Titled as the Movie of the Same Name", inviting attention to a chapter on "Century 21." In that portion of the book, Petitioner asserted that the *Century 21 v. Mohs* jury trial had been "rigged," that Petitioner had been prevented from presenting evidence that there was some connection between Century 21 and organized crime, and that the people from Century 21 were thieves.

Respondent Century 21 instituted civil contempt of court proceedings against Petitioner before the state court which had entered the judgment. After briefs were submitted and a hearing was held, the court issued a January 9, 1986 Memorandum Decision (Appendix jg - jl) determining that Petitioner had wilfully violated the terms of

the injunction and therefore was in contempt of court. No sanctions were imposed by the Decision, no further proceedings were had on the contempt matter, and Petitioner took no appeal from the Memorandum Decision. On May 1, 1986, the state appellate court reversed and vacated the 1984 judgment against Petitioner, on the grounds that the pretrial partial summary judgment cancelling the trademark registration improvidently had been entered. The case was remanded for a new trial on all issues.

The second jury trial in the state court action was held in 1987. The second verdict awarded compensatory and punitive damages in favor of Respondent Century 21 and against Petitioner. Through answers to special verdict questions, the jury also determined, among other things, that Petitioner did not establish a protectable interest in "Century 21" as a trademark or tradename, that Petitioner had used "Century 21" to deceive the public, and that Petitioner had interfered with Respondent Century 21's business. A judgment awarding monetary damages and injunctive relief thereafter was entered. No transcript of the trial was made, and Petitioner took no appeal from the judgment. A motion to enlarge the time for appeal was denied following a hearing in 1988.

At the time of both jury trials and at the time of the contempt proceedings, Mohs was represented by counsel. Counsel also represented him on post-verdict motions following the second jury trial, but Petitioner appeared *pro se* on the post-judgment motion to enlarge the time for appeal.

On January 7, 1991 Petitioner filed an action *pro se* against Century 21 Real Estate Corp. and Trans World

entities in federal court. The District Court dismissed as meritless Petitioner's untimely "amended claims" against one of Petitioner's former trial counsel and the state trial judge who presided over the first jury trial and the civil contempt proceedings. In dismissing Petitioner's action as against Respondents Century 21 and Metropolitan Life, the District Court observed that the federal suit was essentially an effort to relitigate the matters decided adversely to him in state court proceedings concerning rights to the tradename "Century 21." (Appendix iz - jb) Dismissal of claims against the Trans World defendants was predicated on lack of standing, expiration of the Statute of Limitations and failure to state a claim on which relief can be granted.

Petitioner then appealed the District Court's decision to the Seventh Circuit Court of Appeals. On April 30, 1993, the Court of Appeals affirmed the District Court's dismissal. (Appendix ib - lg)

SUMMARY OF ARGUMENT

The Petition should be denied because this Court lacks jurisdiction, and because the Petitioner has failed to demonstrate recognized bases upon which to issue a writ of certiorari.

DISCUSSION

I. SINCE NO DECISION OF THE WISCONSIN SUPREME COURT ADVERSE TO PETITIONER HAS BEEN ISSUED IN THIS MATTER, THIS COURT HAS NO JURISDICTION UNDER 28 U.S.C. §1257(a).

The Petition cites only 28 U.S.C. §1257(a), quoted above, in support of jurisdiction of this Court. Yet the litigation between Century 21 and Petitioner in the Wisconsin courts never produced a decision of the Wisconsin Supreme Court adverse to Petitioner. The only contact the state supreme court had with the litigation came in 1986, when it denied an application for review of the decision of the intermediate court of appeals which reversed the 1984 jury verdict and judgment.

Petitioner never sought any review, in any state appellate court, of the 1986 contempt decision, and did not file an appeal from the judgment against him following the second jury trial.

Simply put, there is no decision of "the highest court of a state" to be reviewed, and 28 U.S.C. §1257(a) has no applicability here.

II. PETITIONER HAS FAILED TO SUGGEST THE STANDARDS OF SUPREME COURT RULE 10 HAVE BEEN MET FOR ISSUANCE OF A WRIT OF CERTIORARI TO THE SEVENTH CIRCUIT.

A grant of certiorari is purely discretionary. Although not wholly inclusive, Rule 10 of the Rules of the

Supreme Court sets forth the standards this Court considers in exercising its discretion whether to grant certiorari. Mohs has not asserted anything in his rambling, overlong Petition that would invoke the jurisdiction of this Court.

A. Petitioner Points To No Conflicting Federal Court Decisions.

Petitioner has failed to point to any conflicting federal court decisions (or to any federal court decisions at all) as a basis for this Court to grant his petition. The gravamen of the Petition appears to be that, since Mohs was first to file a state trademark registration containing a particular term, no one can obtain superior rights to the name. In doing so he ignores the fact that a state trademark registration was involved; that Wisconsin law was applied by Wisconsin courts; that a Wisconsin jury determined Petitioner never established a protectable interest in the mark in question; and that the jury also found Petitioner used the mark for improper purposes.

One of the deficiencies of Petitioner's appeal to the Seventh Circuit, as pointed out by that Court, was Mohs' failure to make legal argument or to cite any legal authority in support of his statements. It is not the Court's job to do Mohs' work for him. (Appendix 1e) Nor is it the job of this Court, or of these Respondents.

B. Petitioner Shows No Departure from the Usual Course Of Judicial Proceedings.

In the portion of his Petition entitled "Amplifying Reasons for Allowance of Writ" Petitioner cites Supreme Court Rule 14(j) in arguing that the Petition should be granted, based on the lower courts "[having] so far departed from the accepted and usual course of judicial proceedings, or [having] sanctioned such a departure by a lower court." But Petitioner fails to show any such departure. Petitioner's principal complaint appears to be that the state court proceedings took considerable time and expense to resolve. Yet the record reflects that Petitioner and his counsel engaged in extensive procedural maneuvering. Petitioner also invites this Court to reconsider issues already decided, solely because he did not like the results of those lower court proceedings. This is not an appropriate function of a writ of certiorari.

C. No Decision Of A State Court of Last Resort is Implicated.

Mohs' state court action, which resolved most if not all of the issues alluded to in his present Petition, was never appealed by Petitioner after the ultimate jury verdict. The First Amendment issues were raised and addressed by the state court contempt proceeding, as well as in the District Court's Memorandum Decision. (Appendix jg - jl) Petitioner's failure to appeal the state court action bars his ability to pursue before this Court issues which were pending in the state trial court. The statute, 28 U.S.C. §1257(a), only allows this Court to review by writ of certiorari final judgments or decrees

rendered by the highest court of a state in which a decision could be had. The contempt issues and First Amendment grounds for opposing the imposition of contempt sanctions never proceeded beyond the state trial court in 1986 or at any time thereafter. No Wisconsin appellate court ever was asked to review the contempt finding. Further, since the underlying injunction was vacated on other grounds, and no sanction ever was imposed, the point is moot. *See Hall v. Beal*, 396 U.S. 45, 48 (1969); *Marshall v. Whittaker Corp.*, 610 F.2d 1141 (3d Cir. 1979).

D. Petitioner Makes No Showing That A Federal Question Has Been Decided In Conflict With Decisions Of The Supreme Court.

Petitioner has failed to show that either a state or federal court decided "an important question of federal law which has not been, but should be, settled by this Court." Instead, it appears that Petitioner is dissatisfied with the application of the common law by Wisconsin trial courts and the interpretation of the Wisconsin trademark registration statute by those courts.

Nor has Petitioner claimed or shown that the Seventh Circuit, the District Court or the state trial court decided a federal question in conflict with applicable Supreme Court decisions on the contempt question. The District Court noted this Court's decision in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), in determining that it lacked subject matter jurisdiction to "modify, review or annul the orders and judgments" of state courts. The Seventh Circuit affirmed, citing *Rooker* and the more recent decision in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

The state court found in 1984 that Petitioner violated the state trademark registration statute and engaged in unfair trade practices. The resulting injunction restricted Petitioner's actions with respect to Respondent Century 21's business and with respect to use of the term Century 21 as a trade name or mark. The decision was consistent with this Court's holding that, where a party violates statutory requirements, it can expect some "fencing in." *FTC v. National Lead Co.*, 352 U.S. 419, 431 (1957). Such limitations may apply where speech, and First Amendment rights, are concerned. *Szabo v. U.S. Marine Corp.*, 819 F.2d 714, 721-22 (7th Cir. 1987).

Petitioner was found to be in contempt of court in January 1986. He took no further action, at any time by way of appeal or otherwise, to have that determination reviewed in the state courts. His federal court action was not filed until a full 5 years after entry of the contempt decision and 4 1/2 years after the underlying injunction was vacated by the state appellate court on other grounds. When the federal action was filed in 1991, there was no live controversy in effect concerning the contempt decision, and thus there was no proper basis to adjudicate any Constitutional question. *Hall v. Beal*, 396 U.S. 45, 48 (1969). Since Petitioner took no prompt action to attempt to secure review in any forum, he has failed to satisfy the principal – and only applicable – test for avoiding the bar of mootness. *Marshall v. Whittaker Corp.*, 610 F.2d 1141 (3d Cir. 1979).

CONCLUSION

Respondents Century 21 Real Estate Corporation and Metropolitan Life Insurance Company respectfully request that the Petition for Writ of Certiorari be denied.

Dated this 9th day of December, 1933.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRUCE BALDWIN MOHS,

Plaintiff,

OPINION and ORDER
91-C-026-C

v.

TRANS WORLD CORPORATION,
TW HOLDINGS, successor to
the above, SWT DIVISION OF
CONISTAN PARTNERS involved
in the transition phases from
TRANS WORLD CORP. to
its present successor entities,
METROPOLITAN LIFE INSURANCE CO., and
CENTURY 21 REAL ESTATE CORP.,

Defendants.

This is an action for monetary and injunctive relief for violations of the securities laws, the First Amendment, and trademark laws, stemming from the use of the name Century 21 in Wisconsin and litigation instigated in Wisconsin state courts by defendant Century 21 Real Estate Corporation. Jurisdiction is asserted under 28 U.S.C. §§1332, 1338 and 15 U.S.C. §1121.

Defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners have moved for dismissal of plaintiff's complaint pursuant to Fed. R. Civ. P. 12 (b) for failure to state a claim, for lack of personal jurisdiction, and for insufficient service of process.

Because I agree with the moving defendants that plaintiff has failed to state a claim against them for which relief may be granted, I do not reach the other grounds for dismissal.

For the sole purpose of deciding the motion to dismiss, I take as true the following factual allegations of the complaint.

Allegations of Fact

Plaintiff is an adult citizen and resident of Fitchburg, Wisconsin. Defendant Trans World Corporation is a publicly held corporation chartered in Delaware and headquartered in New York. Defendants TW Holdings and TW Services, successor corporations to Trans World Corporation, are headquartered in New Jersey and South Carolina respectively.[1] Defendants TW Holdings, TW Services, and Trans World Corporation are all registered as corporations in Delaware. Century 21 Real Estate Corporation is a wholly owned subsidiary of Metropolitan Life Insurance Corporation, and was at certain times relevant

---

[1] Plaintiff refers to "TW Services" as a successor corporation to Trans World Corporation. However, he has not listed this entity as a defendant in the caption to his complaint or alleged any particular liability on its part. Therefore, I will not construe plaintiff's complaint as attempting to state a claim against TW Services.

Plaintiff does not allege any facts regarding the location or incorporation of "SWT Division of Conistan Corporation," listed in the caption as a defendant.

to this action a wholly owned subsidiary of Trans World Corporation.[2]

On October 30, 1985 at a meeting at the World Trade Center in New York, defendants offered a prospectus to stockholders of record, former stockholders, and all present. The purpose of this meeting was to vote on the proposed sale of the Century 21 franchise system to Metropolitan Life Insurance Company for $251,200,000.00. At the time, plaintiff was a former stockholder of Trans World Corporation. Plaintiff did not contemplate buying any stock at this meeting.

In March 1973, plaintiff had filed a statement of adoption of the name "Century 21" with the Wisconsin Secretary of State. Plaintiff planned to use the name for a partnership that would develop a "one-stop home shopping" facility offering building supplies and financial services.

Plaintiff used the Century 21 name in Wisconsin over three and one-half years ahead of defendant Century 21 Real Estate corporation, which filed a statement of adoption with the Wisconsin Secretary of State in December 1976. Plaintiff adopted the name over one half year before Century 21's federal registration of its name. The Wisconsin-based Century 21 company never had a federal registration. Both firms started at about the same time, unknown to the other.

---

[2] Plaintiff's complaint does not clarify the specific type of business in which each defendant is engaged, or explain the relationship among defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners.

Trans World Corporation was not authorized to do business in Wisconsin as of September 1981, or in 1985 when it offered the prospectus on Century 21.

In the prospectus offered at the October meeting, Trans World Corporation omitted the material fact that Century 21 was engaged in litigation over the use of the "Century 21" name in Wisconsin.

The franchise system of Century 21 and its trade name are the principal assets of Century 21 Real Estate Corporation. The value of the franchise system's name to Century 21 was 90% of the total value of the corporation. Therefore, the omission of the ongoing litigation concerning ownership of the Century 21 name violated instructions in the securities regulations specifying that a company must include in its registration statements and other reports any nonroutine ongoing litigation that affects over 10% of the value of the company.

The omission of information about this litigation misled the stockholders and others at the meeting into thinking that all was well with Trans World Corporation's wholly owned subsidiary, Century 21 Real Estate Corporation. The very existence of the company was in jeopardy, in light of the fact that the Wisconsin Court of Appeals had rendered a decision in favor of plaintiff on May 1, 1986.[3] Had Trans World Corporation included

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[3] Plaintiff's exhibits include a January 1986 memorandum from a Dane County circuit court judge, in which the judge found that plaintiff's publication of his autobiography and other activities rendered plaintiff in contempt of an earlier injunction prohibiting him from interfering with defendant Century 21's service and trade mark.

information about the ongoing litigation in the prospectus, stockholders and other parties could have made an honest and educated decision on the sale of the franchise system. Trans World Corporation abused its corporate powers in the meeting held on October 30, 1985. Plaintiff was not allowed to tell the over 300 stockholders present at the meeting the truth about the omissions in the prospectus.

Prior to the October 30 meeting, the legal departments of Metropolitan Life and Trans World were in collusion because plaintiff had warned Metropolitan Life directors to word the prospectus fairly. As a result of the collusion, the meeting was not fair to other bidders for Century 21 because Metropolitan Life already owned a substantial interest in Trans World Corporation.

In January 1986, a Dane County Circuit Court judge banned plaintiff's book, "The Amazing Mr. Mohs,"

In the court of appeals' decision to which plaintiff refers above, the court reversed a prior partial grant of summary judgment to then-plaintiff Century 21 on the issue of then-defendant Mohs's [sic] abandonment of the trade name under Wisconsin law. The court held further that resolution of this issue had been central to the determination of the subsequently tried unfair competition question, which had resulted in a decision unfavorable to Mohs. It ordered a new trial on all issues. The Wisconsin supreme court declined to review this decision on July 28, 1986. The exact outcome of the new trial is not clear from plaintiff's submissions. I infer from the complaint that it was not favorable to plaintiff, as the gist of his complaint before this court is that he is dissatisfied with the "lack of protection" he has received in state courts.

The court of appeals' decision to which plaintiff refers was issued after the October 1985 meeting.

because plaintiff described in chapter 21 the status of the Century 21 trade name litigation to the date of publication in December 1984. Plaintiff had to shelve $60,000 worth of books which were selling well when they were banned. Plaintiff has suffered numerous financial setbacks since he formed a partnership with the same name as the Century 21 Real Estate Corporation, and since that company instituted litigation against him. Plaintiff filed for bankruptcy. The lower state courts in Wisconsin have not protected plaintiff.

In 1977, Bayard Michael, counsel for Century 21 Real Estate Corporation, wrote a letter to the chief attorney for the franchise investment division of the office of the Commissioner of Securities in Washington D.C., in which he concluded that the services for which plaintiff had registered his trademark would not conflict with defendant Century 21's real estate brokerage business. This letter indicates that the litigation subsequently instigated against plaintiff was frivolous.

OPINION

Plaintiff's first contention is that Trans World Corporation violated federal securities law when it offered a prospectus that omitted the material fact that Century 21 Real Estate Corporation was involved in litigation with plaintiff over the use of its trade name, which prevented shareholders and prospective purchasers from making educated investment decisions.

Section 12(2) of the Securities Act of 1933, 15 U.S.C. §77(1) (2), provides for the imposition of civil liability in cases of an omission of material fact in a prospectus

related to the offer or sale of securities. Specifically, it provides that any person who:

> (2) offers or sells a security . . . by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission) . . .
>
> shall be liable to the person *purchasing* such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon . . . [emphasis added].

Defendants point out, correctly, that in order to maintain an action for fraud in the offering of a prospectus under this statute the plaintiff must actually have bought the security. *See Kellman v. ICS, Inc.*, 447 F.2d 1305, 1308 (6th Cir. 1971); *Roger v. Lehman Bros. Kuhn Loeb, Inc.*, 604 F.Supp. 222 (S.D. Ohio 1984) (only purchasers of securities have standing to sue for violations of §12 of the 1933 Act). The anti-fraud provisions of the Securities Act are intended to protect those who make decisions regarding the securities in question. *Cf. Norris v. Wirtz*, 719 F.2d 256, 259-60 (7th Cir. 1983), *cert. denied*, 466 U.S. 929 (1984), *overruled on other grounds, Short v. Belleville Shoe Manufacturing Co.*, 908 F.2d 1385, 1387 (7th Cir. 1990) (discussing purpose of Rule 10b-5 of the Securities and Exchange Act of 1934). They do not provide a remedy for a non-purchaser or seller like plaintiff who has not been injured by a false statement or omission.

Even if plaintiff had purchased Century 21 securities in reliance on the prospectus, his claim would be barred by the applicable statute of limitations. Section 13 of the Securities Act of 1933 provides that no action shall be brought to enforce any liability under section 12(2) unless brought within one year after the discovery of the omission, or after such discovery should have been made by the exercise of reasonable diligence, and under no circumstances more than three years after the sale. 15 U.S.C. §77(m); *Short*, 908 F.2d at 1392. Plaintiff's complaint establishes that he knew in 1985 that the prospectus omitted information about the pending litigation. The three-year limit for instigating litigation under this section expired in 1988. Plaintiff's claim based on a material omission of fact in the prospectus will be dismissed.

Plaintiff's second contention is that his First Amendment rights were abridged because he was prevented from speaking at the October 1985 meeting in New York. The First Amendment is a limitation on governmental action that abridges speech. It does not apply to limits imposed on speech by strictly private actors. *Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213 (7th Cir. 1990), *cert. denied*, 111 S.Ct. 958 (1991) (plaintiff's claim of free speech violation by private entity Air Line Pilots Association derived not from First Amendment but from Landrum-Griffin Act). Plaintiff makes no allegation that there was any governmental participation at the meeting he attended or in imposing the restriction on his speech. Therefore, his allegations fail to state a claim that defendants violated his First Amendment right to speak.

As best I can tell, plaintiff's third contention is that defendant Trans World Corporation's conduct at the

October 1985 meeting constituted an "abuse of corporate power" warranting the revocation of its corporate charter under the laws of Delaware. Plaintiff points to Article IX, §1 of the constitution of the State of Delaware in support of this argument:

> No corporation shall hereafter be created, amended, renewed revived by special act, but only by or under general law, nor shall any existing corporate charter be amended, renewed or revived by special act, but only by or under general law . . . The general Assembly shall, by general law, provide for the revocation or forfeiture of the charters of all corporations for the abuse or non-user of their corporate powers . . .

While plaintiff's concern for the ethical conduct of corporate meetings is admirable, he does not allege any facts that would explain how any such abuse affected or injured his interests. Even if he had, this court would not be able to grant plaintiff any relief with regard to this claim. Article IX, §1 specifies that if revocation of a corporate charter is necessary, "[a]ny proceeding for such revocation or forfeiture, shall be taken by the Attorney General, as may be provided by law." Plaintiff's allegations concerning defendants' liability under Delaware law should be directed to the attorney general of that state.

Plaintiff's broad allegations of collusion between Trans World Corporation and Metropolitan Life are too vague to establish the basis for any claim that these defendants violated any particular right of plaintiff, or violated a particular law that resulted in harm to plaintiff.

In his complaint, plaintiff details numerous financial and personal indignities he asserts he has suffered since defendant Century 21 brought suit against him. As relief for these injuries, plaintiff requests, among other things, compensation for losses incurred through litigation and lost business opportunities; an injunction prohibiting Century 21 from infringing on his trade name; and reinstatement of his rights to the Century 21 name and to sell his book. Plaintiff also seeks novel forms of relief such as compensation to the state courts for their expenses, an oral apology from defendants in front of the state legislature, and a determination by this court that the lawsuits instigated against him were frivolous. Separately or together, plaintiff's allegations fail to state a claim against the moving defendants.

First, the link to the moving defendants contained in plaintiff's allegations is extremely tenuous. Plaintiff does not allege that any of the moving defendants were parties to the state court litigation. In his brief, he asserts only that Trans World Corporation owned Century 21 until the 1985 sale to Metropolitan Life, and that an attorney for Trans World was aware that Century 21 was involved in litigation with plaintiff. These facts do not even suggest that any of the moving defendants were connected to the state court litigation and therefore responsible for plaintiff's suffering.

Second, even if defendants had been involved in the prior litigation, scrutiny of plaintiff's allegations and requests for relief lead to the conclusion that plaintiff is asking this court to revisit and modify judgments of the

state courts with which plaintiff is dissatisfied.[4] This court cannot accommodate such a request.

The jurisdiction of federal district courts is limited to the determination of questions arising under the United States Constitution and under federal law. It has been held repeatedly that absent a constitutional infirmity in the judicial process through which a plaintiff attempts to vindicate his rights, federal district courts do not have authority to review the outcome of claims brought and decided in state court. This rule applies even when the plaintiff characterizes his claim as a new injury or one of constitutional dimensions. *See, e.g., Jentges v. Milwaukee County Circuit Court,* 733 F.2d 1238, 1244 (7th Cir. 1984) (federal court will not set aside conviction in guise of due process review simply because it might disagree with the state court's interpretation of state law) (citing *U.S. ex rel Burnett v. People of the State of Illinois,* 619 F.2d 668, 671 (7th Cir.), *cert. denied,* 449 U.S. 880 (1980)); *Hale v. Harney,* 786 F.2d 688, 691 (5th Cir. 1986) (litigant challenging trial court's ruling in divorce case cannot style suit as civil rights claim to obtain review in federal court if "in essence" court is being asked to review state decision) (citing *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983)); *Reynolds v. Georgia,* 640 F.2d 702 (11th

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[4] As noted earlier, although plaintiff does not provide any allegations about the final outcome of the state litigation, I can infer from the totality of his allegations that at some point after the court of appeals remanded the case, plaintiff received an unfavorable decision. I am unable to determine from the present record whether the issues were subsequently confined to state law, and whether plaintiff exercised his right to appeal an adverse judgment.

Cir. 1981) (despite contention that state court decision resulted in new injury, where plaintiff sought to have federal court set aside state court judgment as void, to obtain a declaration of her rights to the land in question, and enjoin defendants from interfering with her rights to the land, facts and complaint showed that plaintiff sought to review prior proceedings, which amounted to an exercise of appellate jurisdiction district court did not possess); *Town of Hopkins, South Carolina v. Cobb*, 466 F.Supp. 1212 (D.S.C. 1979) (plaintiff's §1983 suit was "veiled request for appellate review of the state court action"). *Cf. Ceramie v. Tucker*, 493 F.2d 586 (5th Cir.), *cert. denied*, 419 U.S. 868 (1974) (federal court's review of validity of decision of appellate courts of Louisiana in negligence case barred by doctrine of res judicata and absence of constitutional infirmity in Louisiana's system of appellate review).

Plaintiff does not allege any constitutional defect in the state court proceedings themselves. Although he has requested varied forms of relief, the gist of his complaint is that plaintiff wants this court to render a different judgment from the one he received in state court regarding the use and alleged infringement of the trade name "Century 21." This court cannot "modify, review or annul the orders and judgments" of the state courts. *Hopkins*, 466 F.Supp. at 1214. The proper manner of obtaining such review is through the appellate courts of this state and by a writ of certiorari to the Supreme Court of the United States. *Id.* at 1214 (citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)).

In addition to requesting review of the state court judgment, plaintiff may be attempting to make out a

claim that defendants violated his rights under federal law, because he has asserted that jurisdiction arises under 15 U.S.C. §1121 and 28 U.S.C. §1338, which give district courts original jurisdiction over actions under the federal trademark laws. However, if that is plaintiff's intention, his allegations still fail to state a claim against the moving defendants. Plaintiff cites to no applicable federal law; he does not detail the relationship between any of the defendants and Century 21; and he does not assert any facts relative to any trademark issues beyond asserting that he registered the Century 21 name first in Wisconsin. The facts in the complaint are too skimpy to state any sort of claim that the moving defendants violated a right of plaintiff under federal law to use the trade name Century 21.

Plaintiff should be aware that there are considerable obstacles at this juncture to his maintaining a successful federal court suit against *any* of the defendants. An action under federal or state law may be barred by the applicable statutes of limitations. Also, depending on the finality of the prior judgments, plaintiff may be collaterally estopped from relitigating issues that were already litigated and decided in the state court action involving defendant Century 21. *See, e.g., Whitley v. Seibel,* 676 F.2d 245, 248 & n. 1 (7th Cir.), *cert. denied,* 459 U.S. 942 (1982); *Speaker Sortation Systems v. United States Postal Service,* 568 F.2d 46 (7th Cir. 1978) (collateral estoppel may be invoked by new defendants against plaintiff as long as plaintiff has had full and fair opportunity to litigate the issue in state court).

ORDER

IT IS ORDERED that the motion to dismiss of defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners is GRANTED. Plaintiff's complaint is DISMISSED with respect to these defendants.

Entered this 11th day of April, 1991.

BY THE COURT:

/s/ Barbara B. Crabb
BARBARA B. CRABB
District Judge